HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R. SUBHASH REDDY

W.A.NOs. 2217 & 2218 OF 2005

Dt. 10.2.2006

Between:

K. Seshagiri Rao & Co.

…Appellant

and

Rashtriya Ispat Nigam Ltd. and another

…Respondents

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R. SUBHASH REDDY

W.A.NOs. 2217 & 2218 OF 2005

COMMON JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

Unsuccessful writ petitioner is the appellant in both the writ appeals. In WP No. 22327 of 2005 he challenged the inaction of the respondents in not issuing tender schedule to him for the work of steel and iron scrap processing, including emergency container management in Visakhapatnam Steel Plant. In W.P.No. 22328 of 2005 the petitioner challenged the inaction of the respondents in not issuing tender schedule to him for the work of Central Dump Processing for the period 2005 to 2008. Both the writ petitions were heard together and decided by a learned single Judge on 3.11.2005 by common order. Both the writ petitions have been dismissed, hence the writ appeals.

The petitioner contended that the petitioner firm was a registered partnership firm and it undertook works of steel and iron scrap processing including emergency container management and also transportation of slag and debris etc. The respondents issued a notice on 22.7.2005 inviting pre-qualification for the work of steel and iron scrap processing including emergency container management in Visakhapatnam Steel Plant (inside the plant). The respondents had also issued earlier a notice on 12.7.2005 inviting pre-qualification for the work of central dump processing for the period from 2005-2008. 12 pre-qualifications criteria were mentioned in the said notices. The

petitioner firm submitted its pre-qualification bids to 2nd respondent. According to the petitioner, all the required documents in proof of eligibility were also enclosed. The 2nd respondent being satisfied about the eligibility of the petitioner forwarded applications to 1st respondent along with other applications. The 1st respondent rejected the applications made by the petitioner-firm on the ground that it does not satisfy pre-qualification criteria No.2. Therefore there is only one question as to whether the petitioner satisfied the pre-qualification criteria or not.

In the counter-affidavit it is stated that the condition No.2 in the notice dt. 12.7.2005 was,

> "The tenderer should have executed a single work of similar nature of value not less than Rs.625 lakhs during the last five years ending 30.6.2005."

With regard to the second notice dt. 22.7.2005 the condition No.2 was,

> "The tenderer should have executed a single work of similar nature of value not less than Rs.786 lakhs during the last five years ending 30.6.2005."

Therefore the petitioner had to show that he had executed a single work of similar nature of value not less than Rs.625 lakhs for the work relating to Central Dump Processing/Scrap processing and Rs. 786 lakhs for other work relating to Steel and Iron Scrap during the last five years. It is contended in the counter-affidavit that the petitioner did not satisfy these conditions. The petitioner submitted identical documents in response to both the notices purporting to satisfy all the qualifications criteria. To satisfy the condition No.2 referred to in both the notices, the petitioner submitted copies of three work orders awarded in his favour by M/s. Jindal Vijayanagar Steel Ltd. Description of the works were given as removal of hot slag,

transportation and unloading at designated place vide work orders dt. 14.1.2003 and 3.9.2002 and scrap recovery operation at Basic Oxygen Furnace (BOF) and continuous Casting Platform (CCP) vide work order dt. 20.2.2002. The work orders submitted by the petitioner did not provide the value of the works. In the absence of information relating to the value of works, it was not possible to assess the eligibility of the petitioner with reference to the condition No.2 and on the basis of the documents submitted by the petitioner one could not come to a conclusion as to whether the petitioner had executed a single work of value specified in the notices. It is further submitted that though it had been made clear in the notice itself that after the bids were received, no further correspondence shall be entertained, but the petitioner wrote letters on 9.8.200 and 11.8.2005 and also two identical letters on 18.8.2005 enclosing certain documents, but even by these letters the petitioner did not satisfy the pre-qualification criteria No.2 for the reasons given in the counter-affidavit. The reasons given are,

1. Documents submitted by the petitioner reveal that it had not executed a single work of similar nature of the value specified in pre qualification condition No.2. The petitioner submitted work order and values for three works. None of the works are of the value equivalent to or more than 625 lakhs or 786 lakhs prescribed in the open notices. The value of the three works submitted are as follows, (1) Rs.6,04,40,647, (2) Rs.2,86,05,084, and (3) Rs.2,03,65,289.

2. A perusal of the three work orders reveal that two of the work orders dt. 14.10.2003 and 3.9.2002 relate to hot slag transportation and unloading at designated place. These works are not similar and are totally different from the notified works of the respondent. As seen from the documents submitted by the petitioner the said two works involve cleaning of slag pits and transportation of hot slag and steel skull from slag yard to

designated place etc. Apparently this work does not involve recovery of steel scrap, iron scrap, steel/iron fines used/rejected refractories from slag and muck from the Central Dump or from all over the plant and transportation of the same to concerned Department or processing yards to process the same and work relating to emergency container management. Hence, two of the works orders submitted for the purpose of satisfying the pre-qualification criteria relating to similar work are totally irrelevant.

3. The third work order dt. 20.2.2004 submitted by the petitioner relates to scrap recovery operations at Basic Oxygen Furance (BOF) and continuous casting platform (CCP). Though this work is to some extent similar to the notified work the value of this work is far below the value stipulated in the pre-qualification condition No.2. Hence the same cannot be considered for both the works.

4. The pre-qualification condition No.2 which prescribes the value of a single similar work actually represents only 50% of the estimated value of the works notified. The petitioner does not possess the experience of handling work worth 50% of the estimated value. Hence the petitioner cannot have a grievance if tender documents are not provided to him.

The only ground taken in the writ appeals is that the learned single Judge failed to see that the tender notification was silent about the nature of work to the extent whether it was hot slag or cold slag and the learned single Judge should not have accepted the contentions advanced by the respondents that the tender schedule pertains to cold slag. Even if this is accepted that it was not known whether it was cold slag or hot slag, but the fact remains that the

petitioner did not satisfy the criteria laid down in condition No.2 mentioned in the notices. He had not shown that he had executed a single work of Rs.625 lakhs and Rs.786 lakhs in a period of five years. Even it was not contended before this Court that the petitioner had an experience that was required in terms of condition No.2 in relation to both works.

For these reasons, we do not find any merit in these appeals which are accordingly dismissed. No costs.

Dt. 10.2.2006 _____

BN J.

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RSR J